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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION6
7 CLIFFORD ALLAN VENSON,

8 Plaintiff,

No. C 05-4136 PJH (PR)

9 v.

10 M. S. EVANS, Warden, et al.,

**ORDER DENYING
PLAINTIFF'S MOTION FOR
DEFAULT**11 Defendants.
12 _____ /13 This is a civil rights case filed pro se by a state prisoner. In the initial review order
14 the court ordered service on defendant Whitman. Whitman's motion to dismiss was
15 denied, and the case was referred to a magistrate judge to hold a settlement conference.
16 The case did not settle.17 The court granted plaintiff's motion to file an amended complaint, reviewed the
18 amended complaint, dismissed claims against two new defendants, and ordered service on
19 additional defendants K. Johnson, C. Dixon, and J. Coleman. Service has been obtained
20 on Johnson and Dixon, but not on Coleman.21 On July 11, 2012, plaintiff moved for entry of default. On July 17, 2012, defendants
22 Whitman, Johnson and Dixon filed a motion for summary judgment and to dismiss for
23 failure to exhaust. They also provided the notice required by *Woods v. Carey*, No 09-
24 15548, slip op. 7871, 7874 (July 6, 2012). Because defendants have filed a dispositive
25 motion and therefore defended, a default judgment is not appropriate. The motion for entry
26 of default (document number 92 on the docket) is **DENIED**. See *Mitchell v. Brown &*
27 *Williamson Tobacco Co.*, 294 F.3d 1309, 1316-17 (11th Cir. 2002) (default judgment
28 inappropriate when defendant has shown an intention to defend, even if intention was

1 shown after expiration of deadline); *Direct Mail Specialists v. Eclat*, 840 F.2d 685, 689 (9th
2 Cir. 1988) (default judgment not appropriate if defendant has shown intent to defend).

3 If plaintiff wants to oppose the dispositive motion he shall do so by August 24, 2012.

4 Because of the age of this case, requests for extensions are discouraged.

5 Plaintiff also must provide within fourteen days of the date of this order an address at
6 which defendant Coleman can be served. If he does not, the claims against Coleman will
7 be dismissed for failure to obtain service. See Fed. R. Civ. P. 4(m).

8 **IT IS SO ORDERED.**

9 Dated: August 3, 2012.



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PHYLLIS J. HAMILTON
11 United States District Judge
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